

REMARKS

Receipt of the Office Action of May 17, 2006 is gratefully acknowledged.

In the previous Response, new claims 16 - 33 were added. Each of these new claims are directed to the elected process feature of the invention and are properly to be examined with previously elected claims 10 - 15. The examiner now states that claims 17, 18, 20, 21, 23, 24, 26, 27, 29, 30 32 and 33 "are drawn to a patentably distinct variants/embodiments of the claimed invention (as clearly established by pages 3 - 5 of the instant specification)." The significance of this observation is not understood. The election requirement made by the examiner was between apparatus and process, and applicant elected the process. The new claims as directed to the elected category.

If a further election is required then a proper further election requirement should be made and the new claims not withdrawn sua sponte without first allowing applicant an opportunity to make a further election or traversing the election. The examiner's reference to 37 CFR 1.141 and MPEP § 821.03 does not change this conclusion. In 37 CFR 1.142 (b) merely refers to the examiner's action after an election is made. It does not give the examiner the authority to act to make an election on his own without first issuing a restriction requirement. MPEP §821.03 refers us to 37 CFR 1.145, which in turn states that new claims are also subject to the requirement and not to be withdrawn without first making the restriction requirement.

Accordingly, it is respectfully submitted that new claims 17, 18, 20, 21, 23, 24, 26, 27, 29, 30, 32 and 33 should be examined along with claims 10 - 16, 19, 22, 25 and 28.

Regarding the examiner's comment that "...these claims are drawn to variants/embodiments 'of the apparatus' according to pages 3 - 5 of the instant specification," it is noted that the claims are process claims and not apparatus claims, and should be treated as such.

Regarding the examiner's objection to the specification, applicant has consulted the pages and lines of the specification identified by the examiner but cannot find where "missing text" may be found. The title has been changed and, hopefully will be acceptable to the examiner.

Claims 6 - 9 have been identified as withdrawn as suggested by the examiner.

The art rejections are noted. These are: claims 10, 16, 19, 22, 25 and 28 as anticipated by Moss under 35 USC 102(b); claims 10, 16, 19, 22, 25 and 28 as anticipated by Mackey under 35 USC 102(b); claims 10, 16, 19, 22, 25 and 28 as anticipated by Volk et al under 35 USC 102(b); claims 10, 16, 19, 22, 25 and 28 as anticipated by JP-198554 under 35 USC 102(b); claims 11 and 12 as unpatentable over Moss, Mackey, Volk, Jr. Et al or JP7-198554 in view of Wilmer et al under 35 USC 103(a); claim 13 as unpatentable over Moss, Mackey, Volk, Jr. Et al or JP7-198554 in view of Linsen et al under 35 USC 103(a); and claims 14, 15, 25 and 28 as unpatentable over Moss, Mackey, Volk, Jr. Et al or JP 7-198554 in view of Wilmer et al under 35 USC 103(a).

All these rejections are respectfully traversed.

In discussing the Moss reference, the examiner utilizes twelve pages of a written text without once mentioning the steps of the claims. For example, claim

10, defines flow in a first fluid line, a second fluid line and a third fluid line. In the noted discussion, applicant does not see any discussion of these steps.

As previously noted, none of the references cited under U.S.C. 35 § 102(b) disclose the feature that the third fluid line is at least intermittently connected to the first and second fluid lines, respectively, see claim 10. Neither Moss (U.S. 3,877,682), Mackey (U.S. 5,288,145), or Volk, Jr. et al (U.S. 5,332,311) discloses first, second and third fluid lines alternatively connected to an intermediary fluid tank (measuring chamber 14; mixer 10, hopper 22, respectively). Moreover, each of said fluid lines communicates with the respective intermediary tank only, if the remaining fluid lines are disconnected. In terms of the present invention, neither the first nor the second fluid can flow from the respective fluid line into the third fluid line. Instead, the first fluid flows from the first fluid line into the tank after connecting the first line to the tank (cut-off valve), and after disconnecting the first line from the tank (cut-off valve) the second fluid line is connected to the tank and the second fluid can flow (see Moss at col. 5, line 65 - col. 6 line 10 ff.; Mackey at col. 3, lines 25 - 53; Volk, Jr. et al at col. 5, lines 17 - 38).

Consequently, none of these references disclose a fluid mixing system with first and second fluid lines alternately connected to a third fluid line for conducting a fluid mixture produced from first and second fluids conducted in the first and second fluid line, respectively. Accordingly, the rejections under 35 USC 102 cannot be sustained.

Regarding the rejections under 35 USC 103, the same conclusion applies. That is the references applied under 35 USC 103 do not teach the three line arrangement claimed.

U.S. Pat. Appl. 10/633,599

In view of the foregoing, entry of the above amendment is respectfully requested and claims 10 - 33 found allowable. Alternatively, it is respectfully requested that the above amendments be entered for purposes of appeal.

Respectfully submitted,
BACON & THOMAS, PLLC

Date: August 17, 2006

A handwritten signature in black ink, appearing to read 'Felix J. D'Ambrosio', with a long horizontal flourish extending to the right.

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